



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1141

[Docket No. EP 715]

Rate Regulation Reforms

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (Board) proposes to change some of its existing regulations and procedures concerning rate complaint proceedings. The Board previously created two simplified procedures to reduce the time, complexity, and expense of rate cases. The Board now proposes to modify its rules to remove the limitation on relief for one simplified approach, and to double the relief available under the other simplified approach. The Board also proposes technical changes to the full and simplified rate procedures, and to raise the interest rate that railroads must pay on reparations if they are found to have charged unreasonable rates. The overarching goal is to ensure that the Board's simplified and expedited processes for resolving rate disputes are more accessible.

DATES: Comments addressing the proposals discussed herein are due by October 23, 2012. Replies are due by December 7, 2012. Rebuttal submissions are due by January 7, 2013.

ADDRESSES: Comments on this proposal may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 715, 395 E Street, S.W., Washington, DC 20423-0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT: The Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Board proposes to modify some of its existing regulations and procedures regarding rate complaint proceedings. The Board's proposal is in four parts. Part I proposes refinements to the Simplified Stand-Alone Cost test by removing the limit on relief and increasing the precision of the calculation of Road Property Investment. Part II proposes to raise the limit on relief for a case brought under the Three-Benchmark test from \$1 million to \$2 million. Part III proposes to limit the use of cross-over traffic in a Full Stand-Alone Cost rate complaint proceeding and to modify the revenue allocation methodology. Part IV proposes to change the interest rate carriers must pay shippers when the rate charged has been found unlawfully high, from the current T-bill rate to the U.S. Prime Rate, as published in *The Wall Street Journal*.

Additional information is contained in the Board's decision served on July 25, 2012. To obtain a copy of this decision, visit the Board's website at <http://www.stb.dot.gov>. Copies of the decision may also be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238.

The Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. §§ 601-604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 5 U.S.C. § 603(a), or certify that the proposed rule would not have a "significant economic impact on a substantial number of small entities," 5 U.S.C. § 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. White Eagle Coop. Ass'n v. Conner, 553 F.3d 467, 480 (7th Cir. 2009). An agency has no obligation to conduct a small entity impact analysis of effects on entities that it does not regulate. United Dist. Cos. v. FERC, 88 F.3d 1105, 1170 (D.C. Cir. 1996).

This proposal would not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act. The proposal imposes no additional record keeping by small railroads or any reporting of additional information. Nor do these proposed rules circumscribe or mandate any conduct by small railroads that is not already required by statute: the establishment of

reasonable transportation rates. Small railroads have always been subject to rate reasonableness complaints and their associated litigation costs. Small railroads have been subject to the simplified rate procedures since 1996, when those procedures were first created. Finally, as the Board has previously concluded, the majority of railroads involved in these rate proceedings are not small entities within the meaning of the Regulatory Flexibility Act. See Simplified Standards, slip op. at 33-34. In the 32 years since the passage of the Staggers Act—when Congress limited the Board’s rate reasonableness jurisdiction where a carrier has market dominance over the transportation at issue—virtually all rate challenges have involved large Class I carriers. Therefore, the Board certifies under 5 U.S.C. § 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1141

Administrative practice and procedure

Decided: July 25, 2012

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Raina S. White

Clearance Clerk

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1141 of title 49, chapter X, of the Code of Federal Regulations as follows:

1. Revise Part 1141 to read as follows:

PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

Authority: 49 U.S.C. 721.

§ 1141.1 Procedures to calculate interest rates.

(a) For purposes of complying with a Board decision in an investigation or complaint proceeding, interest rates to be computed shall be the most recent U.S. Prime Rate as Published by The Wall Street Journal. The rate levels will be determined as follows:

(1) For investigation proceedings, the interest rate shall be the U.S. Prime Rate as published by The Wall Street Journal in effect on the date the statement is filed accounting for all amounts received under the new rates.

(2) For complaint proceedings, the interest rate shall be the U.S. Prime Rate as published by The Wall Street Journal in effect on the day when the unlawful charge is paid. The interest rate in complaint proceedings shall be updated whenever The Wall Street Journal publishes a change to its reported U.S. Prime Rate. Updating will continue until the required reparation payments are made.

(b) For investigation proceedings, the reparations period shall begin on the date the investigation is started. For complaint proceedings, the reparations period shall begin on the date the unlawful charge is paid.

(c) For both investigation and complaint proceedings, the annual percentage rate shall be the same as the annual nominal (or stated) rate. Thus, the nominal rate must be factored exponentially to the power representing the portion of the year covered by the interest rate. A simple multiplication of the nominal rate by the portion of the year covered by the interest rate would not be appropriate because it would result in an effective rate in excess of the nominal rate. Under this

“exponential” approach, the total cumulative reparations payment (including interest) is calculated by multiplying the interest factor for each period by the principal amount for that period plus any accumulated interest from previous periods. The “interest factor” for each period is 1.0 plus the interest rate for that period to the power representing the portion of the year covered by the interest rate.

[FR Doc. 2012-18514 Filed 07/27/2012 at 8:45 am; Publication Date: 07/30/2012]